

North Carolina Medical Board
License Committee – Agenda
September 2014

Mr. Michael Arnold, Chairperson, Subhash Gumber, MD, Diane Meelheim, FNP-BC,
Timothy Lietz, MD, Mr. A. Wayne Holloman

Open Session

Old Business

1. Physicians Health Program (PHP) Referral Criteria

Issue: The Board previously approved criteria for referring applicants for PHP assessments.

May 2008 BOARD ACTION: Establish the following policy with regard to applicants with DWI history and NC PHP evaluations:

Applicants for license will be referred for NC PHP assessment under any one of the following circumstances:

1. Any arrest within the past 5 years for the operation of any vehicle under the influence of any impairing substance.
2. Two or more previous DWI arrests, or the equivalent, over any period of time.
3. In some cases an out-of-state assessment by another state's PHP, which is known and trusted by the Board, will be accepted in lieu of a NC PHP evaluation.

If the license application is otherwise clean, and NC PHP evaluation, performed in compliance with the criteria above, identifies no alcohol or substance abuse problems, no applicant interview will be required with regard to the question of a previous DWI arrest.

A private letter of concern (PLOC) will be sent to applicants who meet this criteria.

The Legal Department has recommended the above criteria be amended as follows:

1. Any arrest within the past 3 years for the operation of any vehicle under the influence of an impairing substance (previously stated: 5 years)
2. Two or more previous DWI arrests, or the equivalent, in the past 5 years (previously stated: over any period of time)
3. (No change to this section)

A private letter of concern (PLOC) may be sent to applicants who meet the criteria. (previously stated: will)

July 2014 Board Action: Table discussion until September meeting. Invite Dr. Jordan to discuss this issue with the committee members.

September 2014 Staff Recommendation: Because the NCPHP Compliance Committee is scheduled to meet at the same time as the License Committee, Dr. Jordan is not able to be

present. He has discussed the proposed changes for NCPHP Referral Criteria with Mr. Blankenship and Ms. Mackiewicz and has no objections. Approve the proposed changes.

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New Business

1. Temporary Licenses – Balestrieri

Issue: Coming out of the July 2014, Board meeting there was a request to include an agenda item for the License Committee: “Why do we issue temporary licenses?” Mr. Balestrieri provides the following history of “temporary” licenses:

Historically, there has been a presumption that qualified reinstatement and initial applicants with a recent history of substance abuse or other mental health condition resulting in their taking time out of practice for treatment be issued a temporary license. The reasoning and rationale was:

1. In the event the Board was uncomfortable with how the temporary licensee was doing, even in the absence of new evidence upon which to take action against the license, the Board could simply not renew the license.
2. There was also believed to be a deterrent effect such that the temporary nature of the license would deter or discourage a relapse or other inappropriate behavior.

Regarding #1, staff could only think of two occasions in the last five years where a temporary license was not renewed. In both of those situations, the Board had other mechanisms in place to take action against the licensee.

Regarding #2, staff discussed this issue with Dr. Pendergast of the North Carolina Physicians Health Program (“NCPHP”) in connection with the preparation of this memorandum. He believes there is no significant deterrent effect created by the temporary nature of a license.

Further, every licensee who is issued a temporary license has traditionally come back for an investigative interview that takes up staff and Board member resources and time. Finally, we have become increasingly aware of negative adverse consequences to some licensees based on the temporary nature of the license: exclusion from insurance panel, cannot sit for specialty board examination and other employment and credentialing problems. For these reasons, we believe the utility of temporary licenses is limited and should be used less frequently going forward. Jim Wilson was requested to provide input on this issue, see bookmark.

Staff Recommendation: Going forward, we recommend qualified reinstatement and initial applicants of this type be issued an “undated” (i.e. non-temporary) license unless there is a compelling reason to give a temporary license. If a temporary license is issued and the licensee is doing well as the initial license expiration date approaches, we also believe there should be a strong presumption that the temporary license be converted to an “undated” license.

In most cases, the discussion whether to recommend a temporary license occurs around a licensing interview. Therefore, those Board members and staff who participate in licensure

interviews should be attentive to this issue. Factors that Board members should consider in making this determination include, but are not limited to, the following:

1. Events and circumstances that took the licensee out of practice
2. Reasons for reinstatement/licensure
3. History of relapses
4. Length of documented sobriety
5. NCPHP comfort level with the length, quality and strength of recovery. NCPHP indicates a red, yellow or green status for all participants. Green is solid recovery, yellow is relatively good recovery and red is poor recovery or not in meaningful recovery. Board members could consider the following guidelines:
 - a. Green NCPHP Status: Issue undated license
 - b. Yellow NCPHP Status: Issue 6-, 9- or 12-month temporary license

Finally, as added protection, the Legal Department will include the language below in Consent Orders whenever there is an increased concern regarding a possible future consent order violation. This will facilitate summary suspension for violating a Consent Order.

Upon an *ex parte* determination of probable cause by the Board that Dr. X failed to comply with any of the terms and conditions of this Consent Order, that determination, without further showing, shall constitute grounds for the Board to summarily suspend Dr. X's North Carolina medical license pursuant to N.C. Gen. Stat. 150B-3(c). Furthermore, if Dr. X fails to comply with any of the terms and conditions of this Consent Order, that failure shall constitute unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and shall be additional grounds for the Board to suspend or revoke his license or to deny any application Dr. X might make in the future or then have pending for a license.

2. Reentry Programs – Kirby

Issue: As OMD readjusts its work flow and priorities, due to changing personnel and circumstances, we must follow the already approved plan of divesting OMD from the responsibility of reviewing, approving, and monitoring reentry plans for physicians and physician assistants. To reiterate the bottom line - OMD cannot possibly or accurately assess what any particular re-entering physician or physician assistant requires to safely and competently resume the practice of medicine without an appropriate or formal competency assessment. It is presumptuous to suggest OMD can ascertain the deficiencies and educational needs for any particular re-entering license applicant without such an assessment. It likewise inappropriate to assume OMD can properly approve and monitor a re-entry plan lacking a competency and educational assessment. Re-entry plans should be developed by objective means and carefully monitored by those educational institutions properly situated and competent to undertake such activities.

Additionally, the Board should consider alternative means (other than solely relying on a formal re-entry plan) of determining whether an applicant has satisfactorily maintained competence to return to practice. The law states:

§ 90-14. Disciplinary Authority

(a) The Board shall have the power to . . . require satisfactory completion of . . . remedial or educational training . . . for any of the following reasons:

(11a) Not actively practiced medicine or practiced as a physician assistant, or having not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for an initial license from the Board or a request, petition, motion, or application to reactivate an inactive, suspended, or revoked license previously issued by the Board. The Board is authorized to adopt any rules or regulations it deems necessary to carry out the provisions of this subdivision.

21 NCAC 32B .1370 REENTRY TO ACTIVE PRACTICE

(a) A physician or physician assistant applicant ("applicant" or "licensee") who has not actively practiced or who has not maintained continued competency, as determined by the Board, for the two-year period immediately preceding the filing of an application for a license from the Board shall complete a reentry agreement as a condition of licensure.

Staff Recommendation: Inform all license applicants, who are required to undertake a competency evaluation for reentry to contact one of the physician competency evaluation centers on the FSMB list: <http://www.fsmb.org/Media/Default/PDF/USMLE/RemEdProg.pdf>